

Mission Statement:

It is the mission of the Department of Law to provide professional, ethical, and independent legal services to the State of Colorado and its citizens, to promote respect for law and access to the justice system, to ensure the fair and open exercise of government, and to protect and advance the public interest.

Vision Statement:

The Colorado Department of Law will be the premier law enforcement agency and public law office leading the state with the trust, confidence, and support of partners, consumers, and policy-makers, while committing to the highest professional and ethical standards.

Statutory Authority:

The statutory authority for the Department is found in Section 24-31 C.R.S. Additional more specific statutory authority is found in Titles 5, 6, 10, 11, 12, 25, 33, 34, 36, 37 and 39.

Description:

The Colorado Attorney General is one of four independently elected statewide offices in Colorado and was established by the state constitution upon statehood in 1876.

The Attorney General and the Department of Law, which Attorney General John W. Suthers oversees (collectively referred to as the Colorado Attorney General's Office or AGO), represents and defends the legal interests of the people of the State of Colorado and its sovereignty. The Attorney General exercises the responsibilities given to his office by the Colorado Constitution, statutes enacted by the Colorado General Assembly and the people of the state of Colorado, and the common law.

The Attorney General has primary authority for enforcement of consumer protection and antitrust laws, prosecution of criminal appeals and some complex white-collar crimes, the Statewide Grand Jury, training and certification of peace officers, and most natural resource and environmental matters. Additionally, the Attorney General's Office works concurrently with Colorado's 22 district attorneys and other local, state and federal law enforcement authorities to carry out the criminal justice responsibilities and activities of the office. The Attorney General is also the chief legal counsel and advisor to the executive branch of state government including the governor, except as otherwise provided by statute, all of the departments of state government, and to the many state agencies, boards, and commissions.

The Department is primarily a cash funded agency that receives funding from state agencies and various programs for the provision of legal services, the investigation and prosecution of fraud, and helping protect the citizens of this state through a number of consumer protection efforts. The Department delivers its responsibilities within a nearly \$68M budget and utilizes roughly

Department of Law
SMART Act/Strategic Plan
FY 2014-15 Budget Request

447 employees to carry out these responsibilities. The Department's services are delivered primarily through seven operational sections.

These seven divisions carry out their specific responsibilities in order to provide the highest quality legal representation for state clients, to all state government agencies, and each program and board within. Additionally, investigative and prosecutorial efforts help protect the interests of state citizens through minimizing fraud and ensuring public safety. These seven units include:

- Criminal Justice and Appellate – Colorado statutes provide that the Attorney General's Office has criminal jurisdiction to: 1) To pursue trial level prosecutions of certain offenses, 2) To oversee certification and training of peace officers, and 3) Provide victim services for Department of Law cases. The Appellate Division – Represents the state on defense appeals of all felony convictions before the state appellate courts or the federal courts.
- Legal Services to State Agencies/ Business and Licensing Section – Provides litigation and legal counsel to State professional licensing and occupational regulatory boards, under the Department of Regulatory Agencies. The section also represents the Department of Agriculture and the Independent Ethics Commission.
- Legal Services to State Agencies/ Revenue and Utilities – Provides litigation and legal counsel representing the Department of Revenue in taxation, bankruptcy and regulatory matters involving the racing, lottery, liquor and motor vehicle dealer boards and commissions. Additionally, this section represents the staff of the Colorado Public Utilities Commission in rate cases, company mergers, licensee matters and performance standards for the telecommunications, electric, gas and transportation companies.
- Legal Services to State Agencies/Natural Resources Section – Protects and defends the interests of the State and its citizens in all areas of natural resources and environmental law. It represents and advises state agencies and boards that regulate and oversee the use and conservation of Colorado's natural resources and the quality of Colorado's environment.
- Legal Services to State Agencies/State Services Section – Legal Services to State Agencies/State Services Section – The Section's work involves representing and defending a broad range of state institutions: the state-wide elected officials, the Public Utilities Commission, the Departments of Human Services, Health Care Policy and Financing and Personnel and Administration. It also represents the health activities in the Department of Public Health and Environment, many of our institutions of Higher Education and the Department of Education. The section is charged with reviewing hundreds of state contracts, including all of the major financing projects for the state.

Department of Law
SMART Act/Strategic Plan
FY 2014-15 Budget Request

- Legal Services to State Agencies/Civil Litigation and Employment Law Section – Defends State employees and agencies in State and federal courts. Cases may involve personal injury suits, property damage, or employment discrimination among others. The Section also prosecutes civil rights violations in administrative and state courts and provides employment law legal advice to all state agencies.
- Consumer Protection Section – Protects Colorado consumers against fraud and provides a competitive business environment through enforcement of state and federal consumer protection, charitable solicitations, antitrust, consumer lending, fair debt collection practices, and numerous other consumer protection statutes. The Section also represents the state Office of Consumer Counsel, advocating before the Public Utilities Commission on behalf of residential, small business, and agricultural rate payers.

Objectives:

The Department of Law aims to achieve our vision and accomplish our mission through these objectives:

- Minimize state risk through the effective representation of client agencies and protect citizens by enforcing regulatory laws and prosecuting cases referred by client agencies;
- Facilitate consumer protection and maintain financial integrity through consumer protection and antitrust enforcement efforts;
- Ensure consumer protection through licensure and registration of regulated consumer lenders, debt collectors, debt-management services providers, and credit repair companies;
- Minimize state risk through the effective representation of state prosecution when defendants challenge their felony convictions before the state appellate courts or the federal courts;
- The Attorney General's Office has statewide jurisdiction to prosecute criminal offenses and, as such, this section handles a wide variety of criminal matters across all areas of the state including white-collar crime offenses, human trafficking cases, homicides, complex drug conspiracies, and special prosecutions in which our assistance is requested by the Governor or an elected district attorney.

The Department tracks specific workload and performance measures and strategic efforts in attempting to meet performance measures. In coordination with the objectives listed above, the Department of Law has provided specific performance measures, strategies, and performance evaluations provided below.

The Department's annual budget request reports additional measures to help provide a complete analysis of the Department's efforts. Please refer to the Attorney General's webpage at <http://www.coloradoattorneygeneral.gov/> to review the annual budget document.

Department of Law
SMART Act/Strategic Plan
FY 2014-15 Budget Request

Priorities:

Representation of Client Agencies. The Attorney General by statute is the legal counsel and advisor of each department, division, board, bureau and agency of state government other than the legislative branch (§ 24-31-101 C.R.S.). The Department represents the various clients efficiently and effectively. The key to this success is retaining quality employees by providing competitive attorney compensation and benefits package and a dynamic work environment.

Objective: To provide quality legal counsel and representation and provide effort that is satisfactory or greater to client agencies.

Performance Measures		Actual FY 12	Actual FY13	Estimate FY14	Request FY15	FY 16
Provide quality legal counsel and representation to client agencies as measured by client annual survey as satisfied or very satisfied with legal counsel.	Target					
		95%	95%	95%	95%	95%
	Actual	96.61%	97.78%			

Strategy: The Attorney General’s Office strives to hire and retain the best lawyers possible to represent client agencies by providing high level and interesting work. Additionally, the office attempts to build the career for each attorney through ongoing continuing legal training, brief writing, oral advocacy, and substantive and procedural matters, as well as exercising good judgment in advising and representing client agencies.

Evaluation of Prior Year Performance: The department witnessed the highest overall satisfaction rating since implementing this performance measure. The department will continue to hire and do its best to retain quality attorneys through the valuable work attorneys are exposed to and within available resources be “an employer of choice” for the legal field.

Criminal Enforcement and Prosecution. The Department has acquired additional resources in order to pursue criminal prosecutions, particularly in the insurance fraud arena. It’s important that the Department be effective in these areas because many DA’s offices do not have the resources or expertise to handle them.

Complex and/or multi-jurisdictional Securities fraud investigations and prosecutions

Objective: To conduct a statewide program for investigating and prosecuting violations of applicable state laws pertaining to securities fraud which local jurisdictions would be unable to effectively handle.

Performance Measures		Actual FY 12	Actual FY 13	Estimate FY 14	Request FY 15	Request FY16
Restitution Ordered	Target	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000
	Actual	\$11,023,182	\$4,283,094			

Strategy: The Unit receives referrals from numerous sources. The Division of Securities refers approximately 50% of the Unit's cases to our office. Private attorneys, law enforcement and private citizens also refer cases to the Unit. Fraud referrals often require substantial investigation, and most investigations take months or years. Some of the fraud referrals, once investigated, do not result in criminal charges. This is due to various reasons, including lack of provable criminal intent, inconsistencies or uncooperative victims and witnesses, or statute of limitations problems when cases are brought to our attention years after the criminal behavior. The Unit had 7 referrals for the year.

Evaluation of Prior Year Performance: The unit's numbers were fairly similar for the past two years; while the case numbers are low, the sentences and restitution figures reflect the complexity and size of the cases prosecuted. However, the Unit has seen a dramatic increase in the number of criminal investigations opened. This is a reflection on greater cooperation with partner law enforcement and regulatory agencies. Additionally, Colorado victims across the Front Range are well represented in that cases prosecuted this year involve Larimer, Arapahoe, Adams, Jefferson, Denver, Broomfield, Douglas and El Paso counties.

Complex and/or multi-jurisdictional Insurance fraud investigations and prosecutions

Objective: To conduct a statewide program for investigating and prosecuting violations of applicable state laws pertaining to fraud relating to insurance which local jurisdictions would be unable to effectively handle.

Performance Measures		Actual FY12	Actual FY13	Estimate FY14	Request FY 15	FY 16
Restitution actually collected pursuant to court order	Target	\$450,000	\$450,000	\$450,000	\$450,000	\$450,000
	Actual	\$648,347	\$3,162,077			

Strategy: The Unit receives referrals from numerous sources. Fraud referrals often require substantial investigation, and some investigations take months or in rare cases even years. Many of the investigations result in charges. However, some of the fraud referrals once they are fully investigated do not result in criminal charges. This is a common part of the criminal investigation process and can be due to a variety of factors including a lack of provable criminal intent, jurisdictional issues, ambiguous documentation or inconsistencies or vagueness in the applicable rules.

The Unit endeavors to be expeditious and responsive when reviewing referrals, opening investigations, and bringing cases through the court system. The Unit will occasionally partner with outside law enforcement agencies to prosecute cases when appropriate.

The statewide grand jury is a powerful investigative tool exclusively available to the Colorado Attorney General's Office. The Unit had a number of complex and multi-jurisdictional cases that were submitted to the grand jury in FY 13. Indictments were obtained on all of these cases. It is anticipated that there will continue to be significant insurance fraud cases submitted to the grand jury in FY 14. Some notable cases that resulted in grand jury indictments in the past year include:

- A large scale staged accident ring where car crashes were being staged and then fraudulent claims being submitted to insurance companies. Six people were indicted.
- An office manager for a dental practice submitted false billing codes to insurance companies to inflate payouts. One person was indicted and convicted of a felony.
- A sophisticated real estate operation where the defendants misappropriated escrowed money from real estate closings and converted them to other business interests causing multi-million dollar losses to a title insurance company. Another part of the scheme involved mortgage fraud through falsifying real estate documents. Two people were indicted. Restitution totaled over \$2.9 million.

Evaluation of Prior Year Performance: The significant increase in restitution ordered helps illustrate that the Unit is meeting the goal of prosecuting more serious cases.

Medicaid Fraud Unit

The Medicaid Fraud Control Unit ("MFCU"), authorized for 17 FTE positions, defends the financial integrity of the state's Medicaid program and the safety of patients in Medicaid-funded facilities. The MFCU investigates and prosecutes fraud by providers against the Medicaid program and patient abuse in Medicaid-funded facilities throughout the state. It also pursues civil recoveries and damages against providers under the Colorado Medicaid False Claims Act, which became law on May 26, 2010.

Department of Law
 SMART Act/Strategic Plan
 FY 2014-15 Budget Request

Performance Measures	Actual FY12	Actual FY13	Estimate FY14	Request FY 15	FY16
----------------------	----------------	----------------	------------------	------------------	------

Medicaid Fraud	Target	\$450,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000
Total fines / Costs / Restitution Recovered	Actual	\$8,469,092	\$16,250,429			

Strategy: The Unit receives referrals from numerous sources. Fraud referrals often require substantial investigation, and some investigations take months or years. Many of the fraud referrals, once investigated, do not result in criminal charges. This is due to various reasons including lack of provable criminal intent, and inconsistencies or vagueness of applicable rules.

The Unit endeavors to be as quick and responsive as possible in receiving referrals, opening investigations, and bringing cases through the court system. When cases are not appropriate for criminal investigation, the Unit refers them promptly for consideration of civil recoveries or refers them to other agencies and/or delivers information or assistance to the referring entity or person to assure that their concerns may be addressed.

The MFCU's case load increased sharply with the addition of the civil unit, both from new local civil cases and from the service upon the state of scores of civil *qui tam* cases based in federal courts throughout the country.

Evaluation of Prior Year Performance: The MFCU obtained more convictions in FY13 than projected for this year.

Consumer Protection

Given the fact that the AG's Consumer Protection Section is small but has very broad jurisdiction (Consumer Protection Act, Antitrust Act, Charitable Solicitation Act and approximately a dozen other statutes) the section does a very good job of selecting appropriate cases for investigation and enforcement, as well as providing consumer outreach to vulnerable groups, most notable the elderly.

Department of Law
SMART Act/Strategic Plan
FY 2014-15 Budget Request

Performance Measure	Outcome	FY 12 Actual	FY 13 Actual	FY 14 Estimate	FY 15 Request	FY 16
Investigate and either sue or settle with individuals or entities that are engaged in deceptive trade practices						
	Target	60	70	60	60	60
	Actual	55	68			

Strategy:

The strategy of both Units continues to be, as it has in the past, to investigate those companies attracting both the largest number and the most discernible pattern of complaints alleging a deceptive trade practice. The consumer intake unit analyzes complaint volume and patterns and regularly communicates to the attorneys within the unit those businesses attracting the most compelling consumer allegations of deceptive advertising and sales practices. The unit also confers with other law enforcement agencies including the FTC, postal service, FBI, and state district attorney's offices to determine what investigations merit the resources of this unit. When investigations confirm the allegations of deceptive trade practices the unit proceeds with prosecution alternatives ranging from voluntary changes to business practices to Formal Assurances of Discontinuance to Complaints for restitution, fines, attorney fees and injunctive relief.

This figure represents investigations and cases that were worked on during FY 13 under the Colorado Consumer Protection Act and Charitable Fraud Act. This figure represents the following actions:

- 24 investigations opened
- 11 settlements, assurances of discontinuance or stipulated final judgments reached in cases, regardless of when they were opened
- 8 lawsuits filed

Performance Evaluation: The number of lawsuits filed and the number of settlements/judgments obtained was consistent with last year but lower than prior years. Significant time and resources are being spent on larger cases and to our increased efforts at enforcing judgments and to collect hidden assets. One attorney spent approximately 40% of his time this past year on a case that resulted in a \$330 million dollar stipulated judgment. Another continues to conduct investigations of large for profit colleges while monitoring former settlements and ensuring that injunctive orders are followed. The large magazine investigation resulted in a judgment of over

Department of Law
SMART Act/Strategic Plan
FY 2014-15 Budget Request

\$6 million and much time has been spent post judgment on collection including the filing of motions to set aside fraudulent transfers and to seize undisclosed assets. Our charitable fraud attorney obtained a restraining order and a seizure of assets against a nationwide charity.

Performance Measure	Outcome	FY 12 Actual	FY 13 Actual	FY 14 Estimate	FY 15 Request	FY 16
Investigate and either sue or settle with individuals or entities that are engaged in anticompetitive conduct such as price fixing, agreeing to restrain trade or entering into mergers that unreasonably restrict competition		<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>	<u>Incidents</u>
	Target	8	10	10	10	10
	Actual	9	12			

Strategy:

The antitrust enforcement strategy is to leverage our limited resources by participating in investigations and cases with the Department of Justice, the Federal Trade Commission and other state Attorney General Offices. Anticompetitive practices with the most profound impact on Colorado residents are usually perpetrated by companies operating on a nationwide basis. With just one antitrust lawyer who also splits his time on enforcement of the no-call laws, this unit can leverage our enforcement efforts by coordinating with other state and federal antitrust enforcement agencies. This strategy allows us to take on those practices that have widespread harm within the state and across the nation. This strategy will continue to be used.

Performance Evaluation:

As a result of this strategy we were able to fulfill our goal of providing protecting for Colorado consumers by leveraging limited resources. The e-books lawsuit provides a good example as to the effectiveness of this strategy. In April 2012 Colorado, along with 32 state Attorney General Offices, filed suit against five publishers and Apple for price fixing on best-selling books that are distributed electronically and read by consumers on tablets or other electronic devices. This is a nationwide practice that Colorado could not handle on its own with just one attorney. This strategy has resulted in \$166.0 million in settlements with

Department of Law
SMART Act/Strategic Plan
FY 2014-15 Budget Request

five publishers, and resulted in a finding that Apple participated in this price-fixing conspiracy.

The figure reported for FY12-13 reports the number of cases investigated, litigated or brought to resolution through settlement or judgment. They include traditional investigations of anticompetitive conduct, such as price fixing and agreements to restrain competition. They also include reviews of mergers that threatened to reduce competition. These activities are broken down as follows:

- The trial and finding entered against Apple in which the court concluded that Apple conspired with eBook publishers to raise the price of eBooks.
- 3 investigations opened to conduct that may be anticompetitive
- 8 settlements reached, including 5 with the publishing companies that conspired with Apple to raise the price of eBooks. These settlements resulted in \$166.0 million to consumers nationwide.

Consumer Credit:

Objective: Ensure compliance with consumer credit laws by regulated entities.

Performance Measures		Actual FY12	Actual FY13	Estimate FY14	Request FY15	FY 16
Require Consumer Refunds	Target	\$2,000,000	\$3,000,000	\$3,000,000	\$3,000,000	\$3,000,000
	Actual	\$5,287,437	\$1,170,574			

Strategy: Refunds result from overcharges and illegal charges discovered from compliance examinations, consumer complaints, searching the Internet, and from litigation. Refunds may include credits to existing balances on open accounts.

Evaluation of Prior Year Performance: Consumer refund total amounts were consistent with previous years prior to the institution of the exam authority of retail sales finance. Additionally, the examinations are resulting in more compliance with the statutes. For FY 12, the total refund number reflects payday lender refunds due under erroneous interpretations of HB 10-1351. Refunds may not be this large again.

Appellate:

Objective: Produce quality briefs appropriately tailored to the seriousness of the offense/appellate challenge while maintaining or improving success rate. As a performance measure, the most quantifiable indicator may be “Cases Resolved,” which reflects the number of briefs filed plus the cases decided by the Court of Appeals via its expedited docket (which issues opinions in simple cases without the need for an AG response) or otherwise resolved.

Department of Law
SMART Act/Strategic Plan
FY 2014-15 Budget Request

Performance Measures		Actual FY12	Actual FY13	Estimate FY14	Request FY15	FY 16
Percentage of cases with a successful outcome on appeal	Target	90%	90%	90%	90%	
	Actual	91.2%	91%			

Strategy:

The strategy of the Division is to do whatever it can to resolve cases in a timely fashion while providing quality representation of the state's interests. Toward that end, it is critical that the Division reduce the backlog to a manageable level.

1. The Division was appropriated six new attorneys for FY 2014, two permanent and four short term (three positions end in FY 2018 and one in FY 2017). It is anticipated that, once these positions are filled and the attorneys trained, Division attorneys can begin making significant inroads on the backlog.
2. Cases are channeled within the Division as efficiently as possible so that the best people for the job are working on particular cases. Many Division attorneys have developed special expertise, and to the extent possible, supervisors channel cases dealing with particular subject areas to those with expertise (few cases, however, ever consist of single issues). Resource materials (a brief bank, outlines, etc.) are compiled and updated to provide starting points and shortcuts for research, and senior staff provide mentoring and oversight so that junior staff get on the right track quickly and efficiently.
3. At the end of FY 2012, the Division worked with the Court of Appeals on a procedure for an "experimental docket" in which Division attorneys screened cases and filed abbreviated pleadings short of thorough briefs. This was designed to expedite the small percentage of cases that could be dealt with easily and effectively without full briefing, thereby increasing Division and court efficiency and expediting case processing. In FY 2013, 91 cases were resolved via the experimental docket. However, many of the judges on the Court of Appeals did not like this practice, as they felt it put them in the role of advocates rather than neutral adjudicators. In addition, it necessitated much more work by the Court's staff attorneys, which also did not work well for the Court. As a result, the Chief Judge has advised the Division that the experimental docket will be discontinued at the end of the 2013 calendar year. The cases that had been diverted to the experimental docket will now need to be absorbed back into the general caseload.
4. The Deputy Solicitor General has organized a working group consisting of representatives from the Appellate Division, the appellate court clerks, the Court of Appeals, the Public Defender's Office, and the Office of Alternate Defense Counsel to discuss matters of mutual concern and

Department of Law
 SMART Act/Strategic Plan
 FY 2014-15 Budget Request

how we might streamline our interaction for maximum efficiency. The group meets every other month and has come up with a number of changes that have been beneficial to all involved.

Performance Evaluation:

Over the past two years, the Division has met its goal of preserving at least 90% of the convictions challenged on appeal.

It has not done as well meeting its caseload. Although the Division has implemented a variety of strategies for increasing efficiency, circumstances beyond its control have hindered that effort. Large incoming numbers, increasingly complex cases, and high turnover resulting in a high percentage of junior attorneys have combined to cause the Division to fall further and further behind each year. This past year, however, due to a combination of factors, the Division was able to counteract this trend and to **reduce** the backlog by 6% (34 cases from 608 cases to 564)

FY 2013-14 Appropriation		FY 2014-15 Request	
Total Appropriation	\$67,936,080	Total Appropriation	\$69,838,822
General Fund		General Fund	
Appropriation	\$12,168,714	Appropriation	\$13,053,699
Total Full Time Equivalent	446.5	Total Full Time Equivalent	451.9
Employees (FTE):		Employees (FTE):	

FY 2013-14 Appropriated Budget by Division

